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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 667

ATLANTIC CLEANERS AND DYERS, INC.; GLOBE DRY CLEANERS AND DYERS, ARCADE-SUNSHINE CO., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JANUARY 30, 1932

(36,481)

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INDEX

	Original	Print
Record from supreme court of District of Columbia	a	1
Caption (omitted in printing)	a	
Petition	1	1
Motion of Vogue Dry Cleaning Company to dismiss	8	5
Motion of Samuel Goldenberg to dismiss	9	6
Motion of Arcade-Sunshine Company to dismiss	10	7
Motion of Harry Viner to dismiss	11	8
Motion of Atlantic Cleaners and Dyers, Inc., to dismiss	12	9
Motion of Samuel Rubenstein et al. to dismiss	13	9
Motion of John F. McCarron to dismiss	13	10
Motion of Globe Dry Cleaners and Dyers et al. to dismiss	14	11
Memorandum opinion, Bailey, J	15	11
Order denying motions to dismiss	15	11
Amended answer of Atlantic Cleaners and Dyers, Inc., et al	16	12
Fiat of Chief Justice Wheat	18	14
Amended answer of Globe Dry Cleaners and Dyers, a corporation, and Samuel Grozbean	18	14

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	Original	Print
Flat of Chief Justice Wheat	20	16
Amended answer of Arcade-Sunshine Company, a corporation, and Harry Viner	21	16
Flat of Chief Justice Wheat	23	18
Amended answer of Vogue Dry Cleaning Company, a corporation, and Samuel Goldenberg	23	18
Flat of Chief Justice Wheat	25	20
Amended answer of Samuel Rubenstein and Charles Rubenstein	26	20
Flat of Chief Justice Wheat	28	22
Motion of plaintiff to strike amended answers	28	22
Decree	29	23
Petition for appeal, assignments of error, and prayer for reversal	31	25
Order allowing appeal	34	26
Bond on appeal (omitted in printing)	35	
Citation and service (omitted in printing)	37	
Stipulation as to transcript of record	38	27
Clerk's certificate (omitted in printing)	40	
Statement of points to be relied upon and designation to print entire record	41	29

[fol. a] [Caption omitted]

[fol. 1]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT

In Equity. No. 49417

UNITED STATES OF AMERICA, Petitioner,

v.

ATLANTIC CLEANERS AND DYERS, INC.; GLOBE DRY CLEANERS AND DYERS, Majestic Cleaning and Dye Works, Inc.; The Mutual Cleaning Company, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein and Charles Rubenstein, John F. McCarron, Samuel Grozbean, Isidore Janet, Joseph A. Geier, Harry Viner, Samuel Goldenberg, Defendants

PETITION—Filed February 7, 1929

To the Judges of the Supreme Court of the District of Columbia:

Now comes the United States of America by Leo A. Rover, its Attorney for the District of Columbia, acting under the direction of the Attorney General, and brings this petition in equity against the following named defendants:

1. Atlantic Cleaners and Dyers, Inc., a corporation under the laws of the State of Delaware.

2. Globe Dry Cleaners and Dyers, a corporation under the laws of the District of Columbia,

[fol. 2] 3. Majestic Cleaning and Dye Works, Inc., a corporation under the laws of the District of Columbia.

4. The Mutual Cleaning Company, a corporation under the laws of the State of Delaware.

5. Arcade-Sunshine Co., a corporation under the laws of the State of Delaware.

6. Vogue Dry Cleaning Company, a corporation under the laws of the State of Delaware.

Each of the above named defendants has a principal place of business in the District of Columbia.

7. Samuel Rubenstein and Charles Rubenstein, both residents of the District of Columbia, and co-partners trading as Rubenstein Cleaning Company. Rubenstein Cleaning Company has a principal place of business in the District of Columbia.

8. John F. McCarron, a resident of the District of Columbia, and an officer and employee of Atlantic Cleaners and Dyers, Inc.

9. Samuel Grozbean, a resident of the District of Columbia, and an officer and employee of Globe Dry Cleaners and Dyers.

10. Isidore Janet, a resident of the District of Columbia, and an officer and employee of Majestic Cleaning and Dye Works, Inc.

11. Joseph A. Geier, a resident of the District of Columbia, and an officer and employee of The Mutual Cleaning Company.

12. Harry Viner, a resident of the District of Columbia, and an officer and employee of Arcade-Sunshine Company.

[fol. 3] 13. Samuel Goldenberg, a resident of the District of Columbia, and an officer and employee of Vogue Dry Cleaning Company.

Each of the above named individual defendants for a long time prior to the filing of this petition has actively participated in the management, direction and control of the affairs and business of the corporation defendant with which he has been affiliated, and especially of its trade and commerce hereinafter described; and each of said individual defendants has acted for the respective corporation defendant of which he is an officer or agent in the making of the agreements and in the doing of the acts and things herein alleged.

The above-named corporation defendants and Samuel Rubenstein and Charles Rubenstein, have been and are

engaged in, and together do substantially all of the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, at plants located therein, principally at wholesale and as master cleaners and dyers, and in pursuance of contracts and engagements between them and so-called retail dyers and cleaners; that is to say, with persons and corporations in the District of Columbia who are engaged in the business of, and who maintain stores or shops in said District for, receiving from the public clothing to be cleaned, dyed or otherwise renovated. Said retail dealers will be hereinafter referred to as Dealers. Said Dealers are so numerous that it is impracticable to set forth thir names herein.

[fol. 4] This petition in equity is brought by the United States of America to prevent the defendants from further engaging in and carrying out in the District of Columbia a combination and conspiracy in restraint of trade and commerce in the District of Columbia in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and of the common law.

The defendants have been and now are, at and within the District of Columbia, engaged in a combination and conspiracy in restraint of, and which throughout said period has unlawfully restrained the aforesaid trade and commerce in the manner herein set forth.

Heretofore, to wit, in August, 1928, the individual defendants arranged to and did meet together in the District of Columbia for the purposes hereinafter described; and at said meeting the defendants arranged, agreed, and mutually pledged themselves to raise the then current prices being charged and received by them for cleaning, dyeing, and renovating clothes; formulated, established, and agreed upon certain minimum and uniform prices, terms, and conditions which each and all of them should thereafter charge and receive for the performance of said service; arranged, agreed, and mutually pledged themselves not to contract or engage to perform the service aforesaid for less than said minimum and uniform prices, terms, and conditions; and [fol. 5] each and all of said defendants arranged, agreed, and mutually pledged themselves not to contract or engage

to perform said service at or upon prices, terms, and conditions independently fixed and established. The defendants, to wit, on September 10, 1928, raised the prices, terms, and conditions to be thereafter charged and received by them for cleaning, dyeing, and renovating clothing; since said date they have been and now are charging and receiving for performing the service aforesaid such increased prices, terms, and conditions; that is to say, said minimum and uniform prices, terms, and conditions agreed upon as aforesaid; and the defendants have refused and now are refusing to contract or engage to perform or to actually perform the services aforesaid at less than the minimum and uniform prices, terms, and conditions so agreed upon.

Heretofore, to wit, in August, 1928, the defendants arranged and agreed amongst themselves that a Dealer who had been trading or was currently trading with one of their number should be regarded and designated as the customer of that defendant with whom he had been or was so trading; and said defendants, by agreement, accordingly assigned and allotted such Dealers to one another to be held as exclusive customers, that is to say, defendants agreed that clothes to be cleaned, dyed, or otherwise renovated for Dealers so assigned and allotted should be done exclusively [fol. 6] by that one of their number to whom he had been assigned and allotted. And the defendants have arranged, agreed, and mutually pledged themselves that no one of them will contract or engage to, or will actually clean, dye, or otherwise renovate clothes for any Dealer whose business has not been assigned to him as aforesaid.

The defendants have made said assignments and allotments effective by refusing, and the fact is alleged to be that each of them has refused and now refuses, to contract or engage to clean, dye, or renovate clothes, or actually to perform such service for any Dealer assigned and allotted to another of their number as aforesaid.

Prayer

Wherefore petitioner prays:

That writs of subpœna issue, directed to each of the defendants, commanding them to appear and answer the allegations of this petition, but not under oath (answer under oath being hereby expressly waived), and to abide by

and perform such orders or decrees as the court may make in the premises.

And, further, that the court order, adjudge, and decree as follows:

1. That the defendants, by the acts and things hereinabove alleged, have been and are engaged in a combination and conspiracy in restraint of trade and commerce in the District of Columbia, in cleaning, dyeing, and otherwise [fol. 7] renovating clothes, in violation of the Act of July 2, 1890, and of the common law.

2. That the defendants and their agents be perpetually enjoined from further engaging in such combination and conspiracy; and particularly from further agreeing or making effective an assignment and allotment of the business of Dealers, and from further agreeing upon prices, terms, and conditions to be charged and received by them for cleaning, dyeing, and renovating clothes, and from doing any or all of the acts and things above described for effectuating and enabling them to observe said agreements.

3. That plaintiff have such other, further, and general relief as the nature of the case may require and the court may deem proper.

United States of America, by Leo A. Rover, United States Attorney. John G. Sargent, Attorney General. William J. Donovan, The Assistant to the Attorney General. Russell Hardy, Ralstone R. Irvine, Special Assistants to the Attorney General.

[fol. 8] In Supreme Court of District of Columbia

Motion of Vogue Dry Cleaning Company to Dismiss Bill—Filed March 6, 1929

. . . . . .

Comes now the defendant Vogue Dry Cleaning Company, by its attorneys, and moves the Court to dismiss the Bill of Complaint filed in the above-entitled cause.

Selig C. Brez, Simon, Koenigsberger, Young & Brez, Attorneys for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies".

3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

4. That said Bill does not set up any unlawful or illegal combination or conspiracy.

Selig C. Brez, Simon, Koenigsberger, Young & Brez,
Attorneys for said Defendant.

Service of the aforegoing Motion, and receipt of copy [fol. 9] thereof, acknowledged the 6th day of March, 1929.
Russell Hardy, Special Assistant to the Attorney General.

In Supreme Court of District of Columbia

Motion of Samuel Goldenberg to Dismiss Bill—Filed March 6, 1929

* * * * * * *

Comes now the defendant Samuel Goldenberg, by his attorneys, and moves the Court to dismiss the Bill of Complaint filed in the above-entitled cause.

Selig C. Brez, Simon, Koenigsberger, Young & Brez,
Attorneys for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies."

3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

4. That said Bill does not set up any unlawful or illegal [fol. 10] combination or conspiracy.

Selig C. Brez, Simon, Koenigsberger, Young & Brez,
Attorneys for said Defendant.

Service of the aforegoing Motion, and receipt of copy thereof, acknowledged the 6th day of March, 1929.

Russell Hardy, Special Assistant to the Attorney General.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF ARCADE SUNSHINE COMPANY TO DISMISS BILL—Filed March 11, 1929

* * * * * * *

Comes now the defendant Arcade Sunshine Company, by its attorney, and moves the Court to dismiss the Bill of Complaint filed in the above entitled cause.

A. L. Newmeyer, Attorney for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of

the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies".

[fol. 11] 3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

4. That said Bill does not set up any unlawful or illegal combination or conspiracy.

A. L. Newmyer, Attorney for said Defendant.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF HARRY VINER TO DISMISS BILL—Filed March 11, 1929

* * * * * * *

Comes now the defendant Harry Viner, by his attorney, and moves the Court to dismiss the Bill of Complaint filed in the above entitled cause.

A. L. Newmyer, Attorney for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies".

3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

[fol. 12] 4. That said Bill does not set up any unlawful or illegal combination or conspiracy.

A. L. Newmyer, Attorney for said Defendant.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF ATLANTIC CLEANERS AND DYERS, INC., TO DISMISS BILL—Filed March 12, 1929

* * * * * * *

Comes now the defendant, Atlantic Cleaners and Dyers, Inc., by its attorneys, and moves the Court to dismiss the Bill of Complaint filed in the above-entitled cause.

Hamilton & Hamilton, by Edmund Brady, Attorneys for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies".

3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

4. That said Bill does not set up any unlawful or illegal combination or conspiracy.

Hamilton & Hamilton, by Edmund Brady, Attorneys for said Defendant.

[fol. 13] IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF SAMUEL RUBENSTEIN ET AL. TO DISMISS PETITION—Filed March 12, 1929

* * * * * * *

Come now defendants, Samuel Rubenstein and Charles Rubenstein, by their attorneys, and move to dismiss the petition herein, and for grounds of this motion say:

That it appears upon the face of the petition that these defendants are not engaged in trade or commerce within the meaning of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraint and Monopolies", or of the common law.

Dale D. Drain, Peelle, Ogilby & Lesh, Attorneys for Defendants Samuel Rubenstein and Charles Rubenstein.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF JOHN F. MCCARRON TO DISMISS BILL—Filed March 12, 1929

* * * * * * *

Comes now the defendant, John F. McCarron, by his attorneys, and moves the Court to dismiss the Bill of Complaint in the above-entitled cause.

Hamilton & Hamilton, by E. Brady, Attorneys for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

[fol. 14] 1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies."

3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

4. That said Bill does not set up any unlawful or illegal combination or conspiracy.

Hamilton & Hamilton, by E. Brady, Attorneys for said Defendant.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF GLOBE DRY CLEANERS AND DYERS ET AL. TO DISMISS PETITION—Filed March 21, 1929

* * * * * * *

Come now the defendants, Globe Dry Cleaners and Dyers, Inc., and Samuel Grozbean, and move the Court to dismiss the petition of the plaintiff filed in this cause, on the grounds, among others—

1. That said petition states no cause of action cognizable in equity.

2. That the bill does not allege an unlawful combination or conspiracy.

3. That the combination or conspiracy alleged is not shown to be in violation of the Anti-Trust Laws of the [fol. 15] United States, or of the Common Law.

Leckie, Cox & Sherier, Attorneys for Defendants Globe Dry Cleaners and Dyers, Inc., and Samuel Grozbean.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MEMORANDUM OPINION—Filed July 24, 1929

* * * * * * *

I think that the bill in this case will lie both under the statute and the principles of the common law.

The motion to dismiss will be overruled and the defendants allowed thirty days within which to answer.

Bailey, J.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER DENYING MOTIONS TO DISMISS PETITION—Filed July 29, 1929

* * * * * * *

Heretofore this cause came on to be heard on motions to dismiss the petition, and was argued by counsel; and

thereupon, upon consideration thereof, it is ordered, adjudged and decreed:

1. That the motions to dismiss be and the same are hereby denied;

2. That each of the defendants file its answer herein within thirty days after service of a copy of this order.

Peyton Gordon, Justice.

July 29, 1929.

[fol. 16] IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDED ANSWER OF ATLANTIC CLEANERS AND DYERS, INC., ET AL.—Filed November 5, 1931

* * * * * * *

Defendants Atlantic Cleaners and Dyers, Inc., a Corporation, and John F. McCarron, by leave of court first had and obtained, file this amended answer to the petition herein, and respectfully show to the Court:

1-13. These defendants admit the allegations of paragraphs 1 to 13 inclusive of said petition, insofar as same relate to them.

14. Answering the 14th paragraph of said petition, these defendants admit that for a long time prior to the filing thereof, the defendant McCarron has actively participated in the management, direction and control of the affairs and business of the defendant Atlantic Cleaners and Dyers, Inc. These defendants deny that the defendant Atlantic Cleaners and Dyers, Inc., has been, or now is engaged in trade or commerce. These defendants neither admit or deny that the defendant McCarron has acted for the defendant Atlantic Cleaners and Dyers, Inc., in the making of agreements, or in the doing of the acts or things alleged in said petition, and, if material herein, they call for strict proof thereof.

15. Answering the 15th paragraph of said petition, these defendants admit that the corporation defendants and the defendants Samuel Rubenstein and Charles Rubenstein

have been, and are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, at plants located therein, in part, in pursuance of contracts and engagements between them and the so-called retail cleaners and dyers. These defendants deny that the [fol. 17] corporation defendants herein, and the defendants Samuel Rubenstein and Charles Rubenstein together do substantially all of the business of cleaning, dyeing, or otherwise renovating clothing in the District of Columbia. In this connection, these defendants state that there are many persons other than the defendants in this suit who are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, and further state, on information and belief, that these other persons do at least one-half of the said business in the District of Columbia.

16. These defendants are advised that they are not required to answer the 16th paragraph of said petition.

17. Answering the 17th paragraph of said petition, these defendants deny that they have been, or now are, within the District of Columbia or elsewhere, engaged in a combination or conspiracy in restraint of trade or commerce, and further answering said paragraph, these defendants deny that they, or either of them have been, or now are, engaged in trade or commerce.

18-19-20. Answering the 18th, 19th and 20th paragraphs of said petition, these defendants neither admit nor deny the allegations thereof, in whole or in part, and, if material herein, they demand strict proof thereof.

Further answering said petition, these defendants allege that the business of dry cleaning and dyeing, in which they are engaged, and to which the charges in said petition relate, consists solely of the performance of labor and the rendering of a service in cleaning, dyeing, and, or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not [fol. 18] trade or commerce within the meaning of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" or of the common law.

Wherefore these defendants pray that said petition be dismissed as to them.

Atlantic Cleaners and Dyers, Inc., and John F. McCarron, by John F. McCarron, Pres. John F. McCarron. Peelle, Ogilby & Lesh, Dale D. Drain, Attorneys for Atlantic Cleaners and Dyers, Inc., and John F. McCarron.

Fiat of Chief Justice Wheat

Let the within amended answer be filed.

Alfred A. Wheat, Chief Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDED ANSWER OF GLOBE DRY CLEANERS AND DYERS, A CORPORATION, AND SAMUEL GROZBEAN—Filed November 5, 1931

* * * * * * *

1-13. These defendants admit the allegations of paragraphs 1 to 13 inclusive, in so far as same relate to them.

14. Answering the 14th paragraph of said Bill, the said defendants admit that for a long time prior to the filing thereof, the defendant Grozbean has actively participated in the management, direction and control of the affairs and business of the defendant Globe Dry Cleaners and Dyers; the said defendants deny that the defendant Globe Dry Cleaners and Dyers has been or is engaged in trade or commerce; the said defendants neither admit nor deny that the defendant Grozbean has acted for the defendant Globe Dry Cleaners and Dyers in the making of the agreements, or in the doing of the acts or things alleged in said Bill, and, if [fol. 19] material herein, they call for strict proof thereof.

15. Answering the 15th paragraph of said Bill, these defendants admit that they have been and are engaged in the business of cleaning, dyeing and otherwise renovating clothing in the District of Columbia in plants located therein, in part, in pursuance of contracts and engagements between them and so-called retail cleaners and dyers; the

said defendants deny that the corporation defendants hereto and the individual defendants together do substantially all of the business of cleaning, dyeing or otherwise renovating clothing in the District of Columbia. In this connection, these defendants state that there are many persons other than the defendants in this suit who are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, and further state, on information and belief, that these other persons do at least one-half of the said business in the District of Columbia. These defendants deny that the defendant Globe Dry Cleaners and Dyers is engaged principally in business as a wholesaler.

16. Answering the 16th paragraph of said Bill, these defendants aver that they are advised that the same states merely a conclusion of law and that they are not required to make answer thereunto.

17. Answering the 17th paragraph of said Bill, these defendants deny that they have been or now are, at or within the District of Columbia, engaged in a combination or conspiracy in restraint of, or which has unlawfully restrained trade and commerce, and further answering said paragraph the said defendants deny that they, or either of [fol. 20] them, have been or are engaged in trade or commerce.

18, 19, and 20. Answering the 18th, 19th and 20th paragraphs of said Bill, the said defendants neither admit nor deny the allegations thereof, in whole or in part, and, if material herein, they demand strict proof thereof.

Further answering said Bill, these defendants allege that the business of dry cleaning and dyeing, in which they are engaged, and to which the charges in said Bill relate, consists solely of the performance of labor and the rendering of a service in cleaning, dyeing and/or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not trade or commerce within the meaning of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" or of the common law.

Wherefore these defendants pray that said Bill be dismissed as to them.

Globe Dry Cleaners and Dyers, by Samuel Grozbean, President. Samuel Grozbean. Leckie & Sherier, by Joseph T. Sherier, Attorneys for Globe Dry Cleaners and Dyers and Samuel Grozbean.

Leave to file granted.

Alfred A. Wheat, Chief Justice.

[fol. 21] IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDED ANSWER OF ARCADE-SUNSHINE COMPANY, A CORPORATION, AND HARRY VINER—Filed November 5, 1931

1-13. These defendants admit the allegations of paragraphs 1 to 13 inclusive, insofar as same relate to them.

14. Answering the 14th paragraph (unnumbered) of said petition, the said defendants admit that for a long time prior to the filing thereof, the defendant Viner has actively participated in the management, direction and control of the affairs and business of the defendant, Arcade-Sunshine Company; the said defendants deny that the defendant Arcade-Sunshine Company has been or is engaged in trade or commerce; the said defendants neither admit or deny that the defendant Viner has acted for the defendant, Arcade-Sunshine Company in the making of the agreements, or in the doing of the acts or things alleged in said Bill, and, if material herein, they call for strict proof thereof.

15. Answering the 15th paragraph (unnumbered) the said defendants admit that the corporation defendants and the defendants Samuel Rubenstein and Charles Rubenstein have been and are engaged in the business of cleaning, dyeing and otherwise renovating clothing in the District of Columbia in plants located therein, in part, in pursuance of contracts and engagements between them and so-called retail cleaners and dyers; the said defendants deny that the corporation defendants hereto and the defendants Samuel

Rubenstein and Charles Rubenstein together do substantially all of the business of cleaning, dyeing or otherwise renovating clothing in the District of Columbia; In this connection, these defendants state that there are many per-
[fol. 22] sons other than the defendants in this suit who are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, and further state, on information and belief, that these other persons do at least one-half of the said business in the District of Columbia. The said defendants deny that the defendant, Arcade-Sunshine Company is engaged principally in business as a wholesaler.

16. Answering the 16th paragraph (unnumbered) of said petition the said defendants aver that they are advised that the same states merely a conclusion of law and that they are not required to make answer thereunto.

17. Answering the 17th paragraph (unnumbered) of said petition, the said defendants deny that they have been or now are, at or within the District of Columbia, engaged in a combination of conspiracy in restraint of, or which has unlawfully restrained trade and commerce, and further answering said paragraph the said defendants deny that they, or either of them, have been or are engaged in trade or commerce.

18, 19 and 20. Answering the 18th, 19th and 20th paragraphs (unnumbered) of said petition, the said defendants neither admit or deny the allegations thereof, in whole or in part, and, if material herein, they demand strict proof thereof.

Further answering said petition, these defendants allege that the business of dry cleaning and dyeing, in which they are engaged, and to which the charges in said petition relate, consists solely of the performance of labor and the rendering of a service in cleaning, dyeing, and/or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not trade or commerce within the meaning of the Act of Con-
[fol. 23] gress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" or of the common law.

Wherefore these defendants pray that said petition be dismissed as to them.

Arcade-Sunshine Company, by Harry Viner, President. Harry Viner. Alvin L. Newmyer, Attorney for Arcade Sunshine Company and Harry Viner.

Fiat of Chief Justice Wheat

Nov. 5, 1931.

Let the within amended answer be filed.

Alfred A. Wheat, Chief Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDED ANSWER OF VOGUE DRY CLEANING COMPANY, A CORPORATION, AND SAMUEL GOLDENBERG—Filed November 5, 1931

* * * * * * *

1-13. These defendants admit the allegations of Paragraphs 1 to 13 inclusive, in so far as same relate to them.

14. Answering the 14th Paragraph of said Bill, the said defendants admit that for a long time prior to the filing thereof, the defendant Goldenberg has actively participated in the management, direction and control of the affairs and business of the defendant Vogue Dry Cleaning Company; the said defendants deny that the defendant Vogue Dry Cleaning Company has been or is engaged in trade or commerce; the said defendants neither admit or deny that the defendant Goldenberg has acted for the defendant Vogue Dry Cleaning Company in the making of [fol. 24] the agreements, or in the doing of the acts or things alleged in said Bill, and, if material herein, they call for strict proof thereof.

15. Answering the 15th Paragraph of said Bill, the said defendants admit that the corporation defendants and the defendants Samuel Rubenstein and Charles Rubenstein have been and are engaged in the business of cleaning, dyeing and otherwise renovating clothing in the District of

Columbia in plants located therein, in part, in pursuance of contracts and engagements between them and so-called retail cleaners and dyers; the said defendants deny that the corporation defendants hereto and the defendants Samuel Rubenstein and Charles Rubenstein together do substantially all of the business of cleaning, dyeing or otherwise renovating clothing in the District of Columbia. In this connection, these defendants state that there are many persons other than the defendants in this suit who are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, and further state, on information and belief, that these other persons do at least one-half of the said business in the District of Columbia. The said defendants deny that the defendant Vogue Dry Cleaning Company is engaged principally in business as a wholesaler.

16. Answering the 16th Paragraph of said Bill, the said defendants aver that they are advised that the same states merely a conclusion of law and that they are not required to make answer thereunto.

17. Answering the 17th Paragraph of said Bill, the said defendants deny that they have been or now are, at or within the District of Columbia, engaged in a combination or conspiracy in restraint of, or which has unlawfully [fol. 25] restrained trade and commerce, and further answering said Paragraph the said defendants deny that they, or either of them, have been or are engaged in trade or commerce.

18, 19 and 20. Answering the 18th, 19th and 20th Paragraphs of said Bill, the said defendants neither admit or deny the allegations thereof, in whole or in part, and, if material herein, they demand strict proof thereof.

Further answering said Petition, these defendants allege that the business of dry cleaning and dyeing, in which they are engaged, and to which the charges in said Petition relate, consist solely of the performance of labor and the rendering of a service in cleaning, dyeing, and/or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not trade or commerce within the meaning of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade

and Commerce Against Unlawful Restraints and Monopolies'' or of the common law.

Wherefore these defendants pray that said Petition be dismissed as to them.

Vogue Dry Cleaning Company, by Samuel Goldenberg. Samuel Goldenberg. Selig C. Brez, Simon, Koenigsberger, Young & Brez, Attorneys for Vogue Dry Cleaning Company and Samuel Goldenberg.

Fiat of Chief Justice Wheat

Nov. 5, 1931.

Let this amended answer be filed.

Alfred A. Wheat, Chief Justice.

[fol. 26] In Supreme Court of District of Columbia

Amended Answer of Samuel Rubenstein and Charles Rubenstein—Filed November 5, 1931

* * * * * * *

Defendants Samuel Rubenstein and Charles Rubenstein, by leave of court first had and obtained, file this amended answer to the petition herein, and respectfully show to the Court:

1-13. These defendants admit the allegations of paragraphs 1 to 13 inclusive of said petition, insofar as same relate to them.

14. These defendants state that they are without knowledge concerning the averments contained in the fourteenth paragraph of the petition except that they deny that any of the defendants are engaged in trade or commerce.

15. Answering the 15th paragraph of said petition, these defendants admit that they and the corporation defendants have been and are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, at plants located therein, in part, in pursuance of contracts and engagements between them and so-called

retail cleaners and dyers. These defendants deny that they and the corporation defendants herein together do substantially all of the business of cleaning, dyeing, or otherwise renovating clothing in the District of Columbia. In this connection, these defendants state that there are many persons other than the defendants in this suit who are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, and further state, on information and belief, that these other persons do at least one-half of the said business in the District of Columbia.

[fol. 27] 16. These defendants are advised that they are not required to answer the 16th paragraph of said petition.

17. Answering the 17th paragraph of said petition, these defendants deny that they have been, or now are, within the District of Columbia or elsewhere, engaged in a combination or conspiracy in restraint of trade or commerce, and further answering said paragraph, these defendants deny that they, or either of them have been, or now are, engaged in trade or commerce.

18-19-20. Answering the 18th, 19th and 20th paragraphs of said petition; these defendants neither admit nor deny the allegations thereof, in whole or in part, and, if material herein, they demand strict proof thereof.

Further answering said petition, these defendants allege that the business of dry cleaning and dyeing, in which they are engaged, and to which the charges in said petition relate, consists solely of the performance of labor and the rendering of a service in cleaning, dyeing, and, or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not trade or commerce within the meaning of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" or of the common law.

Wherefore these defendants pray that said petition be dismissed as to them.

Samuel Rubenstein, Charles Rubenstein. Peelle, Ogilby & Lesh, Dale D. Drain, Attorneys for Samuel Rubenstein and Charles Rubenstein.

[fol. 28] Fiat of Chief Justice Wheat

Let the within amended answer be filed.

Alfred A. Wheat, Chief Justice.

In Supreme Court of District of Columbia

Motion of Plaintiff to Strike Amended Answers—Filed November 9, 1931

Comes now the plaintiff and moves the Court to strike the amended answers of Defendants, Atlantic Cleaners and Dyers, Inc., John F. McCarron, Globe Dry Cleaners and Dyers, Samuel Grozbean, Arcade-Sunshine Co., Harry Viner, Vogue Dry Cleaning Company, Samuel Goldenberg, Samuel Rubenstein and Charles Rubenstein, for that said amended answers are insufficient in law to constitute a defense to the cause of action alleged in the petition herein.

Dated November 5, 1931.

John Lord O'Brian, the Assistant to the Attorney General. Russell Hardy, Geo. P. Alt, Special Assistants to the Attorney General.

Let this motion be filed, nunc pro tunc, as of Nov. 5, 1931.

Alfred A. Wheat, Chief Justice.

To Hamilton & Hamilton, Esqs., Attorneys for defendants Atlantic Cleaners and Dyers, Inc., and John F. McCarron; Leckie, Cox and Sherier, Esqs., Attorneys for defendants Globe Dry Cleaners and Dyers and Samuel Grozbean; Alvin L. Newmyer, Esq., Attorney for defendants Arcade-Sunshine Company and Harry Viner; Selig C. [fol. 29] Brez, Esq., Simon, Koenigsberger, Young & Brez, Esqs., Attorneys for defendants Vogue Dry Cleaning Company and Samuel Goldenberg; Dale D. Drain, Esq., Peelle, Ogilby & Lesh, Esq., Attorneys for defendants Samuel Rubenstein and Charles Rubenstein.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

DECREE—Filed November 5, 1931

* * * * * * *

This cause came on to be heard at this term on plaintiff's motion to strike the amended answers of defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, and the Court being of opinion that the amended answers of said defendants are insufficient in law to constitute a defense to the cause of action alleged in the petition, it is, by the Court, this 5th day of November, 1931,

Ordered, adjudged and decreed that the amended answers of defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, be and the same are hereby stricken from the files.

And said defendants, by their attorneys, appearing in open Court and electing to stand upon their said amended answers to the petition, it is, by the Court, upon consideration thereof, this 5th day of November, 1931, further

Ordered, adjudged and decreed as follows:

[fol. 30] 1. That this Court has jurisdiction of the subject-matter and of all the parties hereto; that the petition herein states a good cause of action against the defendants herein under the Act of Congress approved July 2, 1890, entitled "'An Act To protect trade and commerce against unlawful restraints and monopolies,'' and under the common law.

2. That the petition herein be and the same is hereby dismissed as to the defendants, Majestic Cleaning and Dye Works, Inc., Isidore Janet, The Mutual Cleaning Company and Joseph A. Geier.

3. That the defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles

Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, have been and are engaged in a combination and conspiracy in restraint of trade and commerce in the District of Columbia in cleaning, dyeing and/or otherwise renovating clothes, as described in the petition, in violation of the Act of Congress approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies," and of the common law.

4. That the defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, their officers, agents, servants, employees, and attorneys, and all those in active concert or participation with them, be and they are hereby perpetually enjoined and restrained from—

(a) Further carrying out the combination and conspiracy in restraint of trade and commerce in the District of [fol. 31] Columbia in cleaning, dyeing, and/or otherwise renovating clothes, herein mentioned;

(b) Agreeing upon or making effective any assignment or allotment of the business of retail dyers and cleaners of clothing;

(c) Agreeing upon prices, terms and conditions to be charged and received by them for cleaning, dyeing and renovating clothes;

(d) Doing any acts to effectuate or enable them to observe any agreement for an assignment or allotment of the business of retail dyers and cleaners of clothing, or any agreement upon prices, terms and conditions to be charged and received by them for cleaning, dyeing and renovating clothes.

5. That jurisdiction of this cause be retained by this Court for the purpose of enforcing this decree.

6. That plaintiff recover from said defendants its costs, to be taxed by the Clerk and that it have execution therefor.

Alfred A. Wheat, Chief Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

PETITION FOR APPEAL, ASSIGNMENTS OF ERROR, AND PRAYER FOR REVERSAL—Filed December 29, 1931

* * * * * * * *

Considering themselves aggrieved by the decision of the Supreme Court of the District of Columbia, Holding an Equity Court, entered on the 5th day of November, 1931, the defendants therein, Atlantic Cleaners and Dyers, Inc., A Corporation, Glove Dry Cleaners and Dyers, A Corporation, Arcade-Sunshine Co., A Corporation, Vogue Dry [fol. 32] Cleaning Company, A Corporation, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, hereby pray that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

Assignment of Errors

And the said Atlantic Cleaners and Dyers, Inc., A Corporation, Globe Dry Cleaners and Dyers, A Corporation, Arcade-Sunshine Co., A Corporation, Vogue Dry Cleaning Company, A Corporation, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg assign the following errors in the record and proceedings in the said case and say that the Supreme Court of the District of Columbia erred in the following respects and particulars:

1. In denying defendants' motions to dismiss the plaintiff's petition and in holding that said petition states a cause of action against these defendants or any of them under the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," or under the common law.

2. In holding that defendants' amended answers are insufficient in law to constitute a defense to the alleged cause of action set forth in plaintiff's petition and in granting plaintiff's motion to strike said amended answers.

3. In holding that the business or service of cleaning, dyeing and/or renovating wearing apparel or other articles which have passed into the hands of the ultimate

consumer thereof, in which these defendants are engaged and to which the charges in plaintiff's petition relate, is [fol. 33] trade or commerce under the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," or under the common law.

4. In entering the decree of injunction herein against these defendants or any of them.

Prayer for Reversal

For which errors the defendants, Atlantic Cleaners and Dyers, Inc., A Corporation, Globe Dry Cleaners and Dyers, A Corporation, Arcade-Sunshine Co., A Corporation, Vogue Dry Cleaning Company, A Corporation, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, pray that the said decree of the Supreme Court of the District of Columbia dated November 5, 1931, in the above-entitled cause be reversed and a decree rendered in favor of the said defendants, and for costs.

Dale D. Drain, Attorney for Defendants and Appellants Atlantic Cleaners and Dyers, Inc., a Corporation; Globe Dry Cleaners and Dyers, a Corporation; Samuel Rubenstein, Charles Rubenstein, John F. McCarron, and Samuel Grozbean. Alvin L. Newmyer, Attorney for Defendants and Appellants Arcade-Sunshine Co., a Corporation, and Harry Viner. Selig C. Brez, Attorney for Defendants and Appellants Vogue Dry Cleaning Company, a Corporation, and Samuel Goldenberg.

[fol. 34] In Supreme Court of District of Columbia

Order Allowing Appeal—Filed January 2, 1932

* * * * * * * *

The defendants and appellants in the above-entitled suit, and each of them, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered in said suit by this Court on the 5th day of November, 1931, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors and prayer for

reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided; it is, this 2d day of January, 1932,

Ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from this Court in said cause, as provided by law, and it is further ordered that the Clerk of this Court shall prepare and certify a transcript of the record, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within thirty (30) days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of One hundred Dollars ($100.00/100).

Jesse C. Adkins, Acting Chief Justice of the Supreme Court of the District of Columbia.

[fols. 35 & 36] Bond on appeal for $100.00, approved and filed January 4, 1932, omitted in printing.

[fol. 37] Citation, in usual form, showing service on John Lord O'Brian, filed January 4, 1932, omitted in printing.

[fol. 38] In Supreme Court of District of Columbia

Stipulation as to Transcript of Record—Filed January 11, 1932

* * * * * * * * *

It is stipulated and agreed by and between the attorneys for the respective parties to the above-entitled cause, that the Clerk of the Court shall include in the transcript of record on appeal in said cause the following:

1. Petition or bill of complaint;
2. Motion of defendant, Atlantic Cleaners and Dyers, Inc., to dismiss petition or bill of complaint;
3. Motion of defendants, Globe Dry Cleaners and Dyers and Samuel Grozbean, to dismiss petition or bill of complaint;
4. Motion of defendant, Arcade-Sunshine Co., to dismiss petition or bill of complaint;

5. Motion of defendant, Vogue Dry Cleaning Company, to dismiss petition or bill of complaint;

6. Motion of defendants, Samuel Rubenstein and Charles Rubenstein, to dismiss petition or bill of complaint;

7. Motion of defendant, John F. McCarron, to dismiss petition or bill of complaint;

8. Motion of defendant, Harry Viner, to dismiss petition or bill of complaint;

9. Motion of defendant, Samuel Goldenberg, to dismiss petition or bill of complaint;

10. Memorandum opinion of Mr. Justice Bailey;

11. Order denying motion to dismiss the petition;

12. Amended answer of defendants, Atlantic Cleaners and Dyers, Inc. and John F. McCarron;

13. Amended answer of defendants, Globe Dry Cleanres and Dyers and Samuel Grozbean;

14. Amended answer of defendants, Arcade-Sunshine Co. and Harry Viner;

15. Amended answer of defendants, Vogue Dry Cleaning Company and Samuel Goldenberg;

[fol. 39] 16. Amended answer of defendants, Samuel Rubenstein and Charles Rubenstein;

17. Motion of plaintiff to strike amended answers of said defendants;

18. Decree;

19. Petition for Appeal, Assignment of Errors and Prayer for Reversal;

20. Order Allowing Appeal;

21. Bond on Appeal;

22. Citation on Appeal;

23. This Stipulation.

Dated January 11, 1932.

Dale D. Drain, Attorney for Defendants and Appellants Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Samuel Rubenstein, Charles Rubenstein. John F. McCarron, and Samuel Grozbean. Alvin L. Newmyer, Attorney for Defendants and Appellants Arcade-Sunshine Co. and Harry Viner. Selig C. Brez, Attorney for Defendants and Appellants Vogue Dry Cleaning Company and Samuel Goldenberg. John Lord O'Brian, The Assistant to the Attorney General of the United States.

[fol. 40] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 41] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON, AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Feb. 3, 1932

Come now the appellants and adopt their assignments of error as their statement of the points to be relied upon, and [fols. 42 & 43] represent that the whole of the record, as filed, is necessary for the consideration of the case.

Dale D. Drain, Attorney for Appellants Atlantic Cleaners and Dyers, Inc., a Corporation; Globe Dry Cleaners and Dyers, a Corporation; Samuel Rubenstein, Charles Rubenstein, John F. McCarron, and Samuel Grozbean. Alvin L. Newmyer, Attorney for Appellants Arcade-Sunshine Co., a Corporation, and Harry Viner. Selig C. Brez, Attorney for Appellants Vogue Dry Cleaning Company, a Corporation, and Samuel Goldenberg.

Service of the foregoing statement of points to be relied upon and designation of the parts of the record to be printed, by receipt of copy thereof, is acknowledged, this 3d day of February, 1932.

Thomas D. Thacher, Solicitor General. (I)

[fol. 44] [File endorsement omitted.]

Endorsed on cover: File No. 36,481. District of Columbia Supreme Court. Term No. 667. Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., et al., appellants, vs. The United States of America. Filed January 30, 1932. File No. 36,481.

FILE COPY

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CHARLES E.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 667.

ATLANTIC CLEANERS AND DYERS, INC., ET AL.,
Appellants,

v.

UNITED STATES OF AMERICA, *Appellee.*

On appeal from the Supreme Court of the District of Columbia.

STATEMENT AS TO JURISDICTION ON APPEAL.

DALE D. DRAIN,
Attorney for Appellants, Atlantic Cleaners and Dyers, Inc., a corporation, Globe Dry Cleaners and Dyers, a corporation, Samuel Rubenstein, Charles Rubenstein, John F. McCarron and Samuel Grozbeun.

ALVIN L. NEWMYER,
Attorney for Appellants, Arcade-Sunshine Co., a corporation, and Harry Viner.

SELIG C. BREZ,
Attorney for Appellants, Vogue Dry Cleaning Company, a corporation, and Samuel Goldenberg.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 667.

ATLANTIC CLEANERS AND DYERS, INC., ET AL.,
Appellants,

v.

UNITED STATES OF AMERICA, *Appellee.*

On appeal from the Supreme Court of the District of Columbia.

STATEMENT AS TO JURISDICTION ON APPEAL.

May it please the Court:

The appellants in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represent:

A

STATUTORY PROVISIONS SUSTAINING JURISDICTION.

The Act of February 11, 1903, Chapter 544, Section 2, 32 Stat. 823, as amended by the Act of March 3, 1911, Chapter 231, Section 291, 36 Stat. 1167 (United States Code, Title 15, Section 29), provides:

> "In every suit in equity brought in any district court of the United States under any of the laws mentioned in the preceding section, wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof."

B

DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL.

The decree sought to be reviewed was entered on 5th day of November, 1931 (R. 29).*

The application for appeal was presented on the 2nd day of January, 1932 (R. 34).

C

NATURE OF CASE AND RULING BELOW.

This is a suit in equity brought by the United States under Section 4 of the Sherman Anti-Trust Act of July 2, 1890, Chapter 647, 26 Stat. 209 (United States Code, Title 15, Section 4), to enjoin alleged violations of that statute (R. 1-7). The decree granted the relief prayed for against these appellants (R. 29).

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*All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the Supreme Court of the District of Columbia and on file with the Clerk of this Court. The record has not yet been printed.

D

CASES BELIEVED TO SUSTAIN JURISDICTION.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

United States v. California Co-operative Canneries, 279 U. S. 553.
Swift & Company v. United States, 276 U. S. 311.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Section 2 of the Act of February 11, 1903, as amended by the Act of March 3, 1911 (U. S. C., Title 15, Section 29).

Respectfully submitted,

DALE D. DRAIN,
Attorney for Appellants, Atlantic Cleaners and Dyers, Inc., a corporation, Globe Dry Cleaners and Dyers, a corporation, Samuel Rubenstein, Charles Rubenstein, John F. McCarron and Samuel Grozbean.

ALVIN L. NEWMYER,
Attorney for Appellants, Arcade-Sunshine Co., a corporation, and Harry Viner.

SELIG C. BREZ,
Attorney for Appellants, Vogue Dry Cleaning Company, a corporation, and Samuel Goldenberg.

FILE COPY

FILED
APR 16 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 667.

ATLANTIC CLEANERS AND DYERS, INC., ET AL., *Appellants*,

v.

THE UNITED STATES OF AMERICA.

ON APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF OF APPELLANTS.

DALE D. DRAIN,
Attorney for Appellants, Atlantic Cleaners and Dyers, Inc., a corporation, Globe Dry Cleaners and Dyers, a corporation, Samuel Rubenstein, Charles Rubenstein, John F. McCarron and Samuel Grozbean.

ALVIN L. NEWMYER,
Attorney for Appellants, Arcade-Sunshine Co., a corporation, and Harry Viner.

SELIG C. BREZ,
Attorney for Appellants, Vogue Dry Cleaning Company, a corporation, and Samuel Goldenberg.

PEELLE, OGILBY & LESH,
SIMON, KOENIGSBERGER, YOUNG & BREZ,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

SUBJECT INDEX.

	Page
I. The opinion of the court below	1
II. Statement of the case	2
III. The Statute	4, 5
IV. Specification of errors	5, 6
V. Argument	6, 20
SUMMARY OF ARGUMENT.	6, 7
Point A. "Trade or commerce", as used in the Sherman Anti-Trust Act, does not embrace activities or occupations not included in the term "commerce" as used in the commerce clause of the Constitution	7
Point B. It has been settled by decisions of this court that many lines of business are not "commerce" as that term is used in the commerce clause of the Constitution	9
Point C. "Trade or commerce", as used in the Sherman Anti-Trust Act, connote the transfer of something, whether it be persons, commodities or intelligence, from one place or person to another	11
Point D. The business of dry cleaning and dyeing here involved consists solely of the performance of labor and the rendering of a service in cleaning, dyeing and/or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof and is not "trade or commerce" within the meaning of the Sherman Anti-Trust Act	14
Point E. The use of the term "restraint of trade" by courts in passing upon the enforceability of restrictive covenants affecting various businesses, occupations and professions is no support for the contention that such businesses, occupations or professions are "trade or commerce" within the meaning of the Sherman Anti-Trust Act	19
CONCLUSION	21

CASES CITED.

Arkadelphia Mill Co. v. St. Louis Southwestern R. Co., 249 U. S. 134	10
Blumenstock Brothers Advertising Agency v. Curtis Publishing Co., 252 U. S. 436	7, 11, 18
Bothwell v. Buckbee, Mears Co., 275 U. S. 274	9
Capital City Dairy Co. v. Ohio, 183 U. S. 238	10
Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 129	10, 11
Delaware, L. & W. R. Co. v. Yurkonis, 238 U. S. 439	10
Federal Baseball Club v. National League of Professional Baseball Clubs, 259 U. S. 200	11, 13, 18
Gibbons v. Ogden, 9 Wheat. 1	12
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196	12

	Page
Hammer v. Dagenhart, 247 U. S. 251	10
Hooper v. California, 155 U. S. 648	9, 13, 18
In re Charge to Grand Jury, 151 Fed. 834	12
International Text Book Co. v. Pigg, 217 U. S. 91	18
Kansas City v. Seaman, 99 Kans. 143	18
Kidd v. Pearson, 128 U. S. 1	9, 10
May v. Sloan, 101 U. S. 231	12
McCluskey v. Maryville & N. R. Co., 243 U. S. 36	10
Minnesota v. Northern Securities Co., 123 Fed. 692	17
National League, etc. v. Federal Baseball Club, 50 App. D. C. 165	12
New York Life Insurance Co. v. Deer Lodge County, 231 U. S. 495	9, 18
Paul v. Virginia, 8 Wall. 168	9
State v. Duluth Board of Trade, 107 Minn. 506	16
State v. Frank, 114 Ark. 47	15
Smith v. Jackson, 103 Tenn. 673	14
State v. McClellan, 155 La. 38	15
Tooke & Reynolds v. Bastrop Ice & Storage Co., 172 La. 781	16
United Leather Workers' International Union v. Herkert & Meisel Trunk Co., 265 U. S. 457	10
United States Fidelity & Guaranty Co. v. Kentucky, 231 U. S. 394	11, 18
United States v. Agler, 62 Fed. 824	20
United States v. Fur Dressers' & Fur Dyers' Ass'n, 5 Fed. (2d) 869	16
United States v. E. C. Knight Co., 156 U. S. 1	10, 11, 12
United States v. Swift & Co., 122 Fed. 529	12
United States v. United States Steel Corporation, et al., 223 Fed. 55	12

CONSTITUTION CITED.

Art. I, Sec. 8, Cl. 3	7

STATUTES CITED.

Act of July 2, 1890, C. 647, Secs. 1, 3, 4 (26 Stat. 209)	4, 5
Act of October 15, 1914, C. 323, Secs. 1, 6 (38 Stat. 730)	19

TEXTBOOK CITED.

Thornton, Combinations in Restraint of Trade, pp. 88, 167, 690-692	13, 20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 667.

ATLANTIC CLEANERS AND DYERS, INC., ET AL., *Appellants*,

v.

THE UNITED STATES OF AMERICA.

ON APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF OF APPELLANTS.

I.

The Opinion of the Court Below.

The final decree of the Supreme Court of the District of Columbia was entered on the 5th day of November, 1931 (R. 23-24) without opinion. In denying the motions of appellants to dismiss the petition, the court below, on July 24, 1929, filed a four-line memorandum opinion (R. 11), which is not reported.

II.

Statement of the Case.

This is an appeal by the defendants below from a decree of injunction of the Supreme Court of the District of Columbia (R. 23-24) in favor of the plaintiff in a suit in equity described in the petition as "brought by the United States of America to prevent the defendants from further engaging in and carrying out in the District of Columbia a combination and conspiracy in restraint of trade and commerce in the District of Columbia in violation of the Act of Congress of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' and of the common law." (Petition, R. 3)

The business in which the appellants are engaged and to which the alleged restraint was applied is described in the Government's petition as follows:

> "The * * * defendants * * * are engaged in * * * the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, at plants located therein, principally at wholesale and as master cleaners and dyers, and in pursuance of contracts and engagements between them and so-called retail dyers and cleaners; that is to say, with persons and corporations in the District of Columbia who are engaged in the business of, and who maintain stores or shops in said District for, receiving from the public clothing to be cleaned, dyed or otherwise renovated." (R. 2-3)

The means averred in the petition to have been agreed upon and used by the appellants in imposing the alleged restraint are the raising of prices and the assigning and allotting of customers in the performance of said "service". (R. 3-4)

Motions were interposed by the defendants to dismiss the petition on grounds which may be summarized as that the petition does not state a cause of action in equity and that it appears on the face of the petition that the defendants are not engaged in trade or commerce within the meaning of the Sherman Anti-Trust Act or of the common law. (R. 5-11) These motions were denied, the trial justice announcing his decision in a four-line memorandum opinion. (R. 11)

The case came on for hearing on the motion of the United States to strike the amended answers of the defendants (appellants here) on the ground "that said amended answers are insufficient in law to constitute a defense to the cause of action alleged in the petition." (R. 22)

These amended answers are in substantially the same form (R. 12-21), and therein the respective defendants (appellants here) admit that they and the other defendants have been and are engaged in the business of cleaning, dyeing and otherwise renovating clothing in the District of Columbia, at plants located therein, in part, in pursuance of contracts and engagements between them and so-called retail cleaners and dyers; and deny that they and the other defendants together do substantially all of the business of cleaning, dyeing or otherwise renovating clothing in the District of Columbia; and affirmatively allege that there are many persons other than the defendants in said suit who are engaged in the business of cleaning, dyeing and otherwise renovating clothing in the District of Columbia, and aver, on information and belief, that these other persons do at least one-half of the said business in the District of Columbia. (R. 12-21) The amended answer of Vogue Dry Cleaning Company, a corporation, and Samuel Goldenberg, specifically denies that the said Vogue Dry Cleaning Company is engaged principally in business as a wholesaler. (R. 19)

The amended answers of the respective defendants further deny that they have been or are, within the District of Columbia or elsewhere, engaged in a combination or conspiracy in restraint of trade or commerce, and specifically deny that they have been or are now engaged in trade or commerce. (R. 13, 15, 17, 19, 21) Said amended answers neither admit nor deny the allegations of the petition in regard to the alleged means employed to impose the charged restraint. (R. 13, 15, 17, 19, 21)

Affirmatively, said amended answers of the respective defendants aver "that the business of dry cleaning and dyeing, in which they are engaged, and to which the charges in said petition relate, consists solely of the performance of labor and the rendering of a service in cleaning, dyeing, and, or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not trade or commerce within the meaning of the Act of Congress of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies' or of the common law." (R. 13, 15, 17, 19, 21)

The court below granted the motion of the Government to strike said amended answers on the ground that they were insufficient in law to constitute a defense to the cause of action alleged in the petition (R. 23) and, defendants (these appellants), electing to stand upon said amended answers, the court entered a final decree of injunction as prayed for in the petition, (R. 23-24) from which decree this appeal was thereupon duly taken. (R. 25-26) (See statement as to jurisdiction on appeal heretofore filed herein.)

III.

The Statute.

The pertinent provisions of the Sherman Anti-Trust Act, being the Act of Congress of July 2, 1890, Chap. 647, 26 Stat. 209 (15 U. S. C., Secs. 1, 3, 4) are as follows:

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal." * * * *

"Sec. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal." * * *

"Sec. 4. The several circuit (district) courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited." * * *

IV.

Specification of Errors.

The appellants have assigned as reversible error that the Supreme Court of the District of Columbia erred in the following respects and particulars:

1. In denying defendants' motions to dismiss the plaintiff's petition and in holding that said petition states a cause of action against these defendants or any of them under the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," or under the common law.

2. In holding that defendants' amended answers are insufficient in law to constitute a defense to the alleged cause of action set forth in plaintiff's petition and in

granting plaintiff's motion to strike said amended answers.

3. In holding that the business or service of cleaning, dyeing and/or renovating wearing apparel or other articles which have passed into the hands of the ultimate consumer thereof, in which these defendants are engaged and to which the charges in plaintiff's petition relate, is trade or commerce under the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," or under the common law.

4. In entering the decree of injunction herein against these defendants or any of them. (R. 25-26)

Appellants rely on all of the errors assigned, but if appellants are correct in their understanding that there is no contention on the part of the United States that this suit may be maintained under the common law independently of the Sherman Anti-Trust Act, then a single question is presented in this appeal which may be thus stated:

Is the business or service of cleaning, dyeing and/or renovating wearing apparel or other articles which have passed into the hands of the ultimate consumer thereof, in which these appellants are engaged and to which the charges in the Government's petition relate, trade or commerce under the said Sherman Anti-Trust Act?

V.

Argument.

Summary of Argument.

Point A. "Trade or commerce", as used in the Sherman Anti-Trust Act, does not embrace activities or occupations not included in the term "commerce" as used in the commerce clause of the Constitution.

Point B. It has been settled by decisions of this court that many lines of business are not "commerce" as that term is used in the commerce clause of the Constitution.

Point C. "Trade or commerce", as used in the Sherman Anti-Trust Act, connote the transfer of something, whether it be persons, commodities or intelligence, from one place or person to another.

Point D. The business of dry cleaning and dyeing here involved consists solely of the performance of labor and the rendering of a service in cleaning, dyeing and/or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof and is not "trade or commerce" within the meaning of the Sherman Anti-Trust Act.

Point E. The use of the term "restraint of trade" by courts in passing upon the enforceability of restrictive covenants affecting various businesses, occupations and professions is no support for the contention that such businesses, occupations or professions are "trade or commerce" within the meaning of the Sherman Anti-Trust Act.

Point A.

"Trade or commerce," as used in the Sherman Anti-Trust Act, does not embrace activities or occupations not included in the term "commerce" as used in the commerce clause of the Constitution.

It is, of course, settled that the power of Congress to enact Section 1 of the Sherman Anti-Trust Act rests solely on the commerce clause of the Constitution (Art. I, Sec. 8, Clause 3) which empowers Congress "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

In *Blumenstock Brothers Advertising Agency v. Curtis Publishing Co.*, 252 U. S. 436, 441, this court said: "The Anti-Trust Act, it is hardly necessary to say, derives its authority from the power of Congress to regulate commerce among the States."

It therefore necessarily follows that "trade or com-

merce" as used in Section 1 of the Act cannot be broader than "commerce" as used in the commerce clause of the Constitution.

While the power of Congress to legislate for the District of Columbia does not rest on the commerce clause of the Constitution but on the plenary power of Congress to legislate for said District, yet in Section 3 of said Act Congress has used the identical language in describing things prohibited within the District of Columbia that it has used in Section 1 in describing the things prohibited among the several States. Furthermore, Section 3 goes on to prohibit the same things between the Territories, or between a Territory and a State, or between the District of Columbia and any Territory, State or foreign Nation.

We know of no intimation in any decision that Congress, in using the term "trade or commerce" in the first section of the Act went beyond the power given it under the commerce clause of the Constitution. Nor has it even been held, so far as we know, that said term as so used must be narrowed in order to bring that section within the Constitutional power of Congress.

Certainly it seems to follow that "trade or commerce" as used in the third section of the Act has exactly the same meaning as in the first section of the Act, and consequently must come within the meaning of "commerce," as used in the commerce clause of the Constitution.

It thus becomes relevant to determine what is or is not "commerce" within the meaning of the commerce clause of the Constitution.

Point B.

It has been settled by decisions of this Court that many lines of business are not "commerce" as that term is used in the commerce clause of the Constitution.

The business of insurance is not commerce.

Paul v. Virginia, 8 Wall. 168, 183:

"Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts of indemnity against loss by fire, entered into between the corporations and the assured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another, and then put up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration."

Hooper v. California, 155 U. S. 648, 655:

"The business of insurance is not commerce."

New York Life Insurance Co. v. Deer Lodge County, 231 U. S. 495, 510:

"The decisions of the cases is that contracts of insurance are not commerce at all, neither state nor interstate."

Bothwell v. Buckbee, Mears Co., 275 U. S. 274, 276-277.

Manufacturing is not commerce.

Kidd v. Pearson, 128 U. S. 1, 20:

"No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The

buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation."

United States v. E. C. Knight Co., 156 U. S. 1, 12:

"Commerce succeeds to manufacture, and is not a part of it."

Hammer v. Dagenhart, 247 U. S. 251, 272:

"Commerce 'consists of intercourse and traffic * * * and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities.' The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped, or used in interstate commerce, make their production a part thereof."

Crescent Cotton Oil Co, v. Mississippi, 257 U. S. 129, 136:

"The separation of the seed from the fiber of the cotton, which is accomplished by the use of the cotton gin, is a short but important step in the manufacture of both the seed and the fiber into useful articles of commerce, but that manufacture is not commerce was held in *Kidd v. Pearson*, 128 U. S. 1, 20; *United States v. E. C. Knight Co.*, 156 U. S. 1, 12, 13; *Capital City Dairy Co. v. Ohio*, 183 U. S. 238, 245; *McCluskey v. Marysville & N. R. Co.*, 243 U. S. 36, 38; and in *Hammer v. Dagenhart*, 247 U. S. 251, 252; *Arkadelphia Mill Co. v. St. Louis Southwestern R. Co.*, 249 U. S. 134, 151, 152."

United Leather Workers' International Union v. Herkert & Meisel Trunk Co., 265 U. S. 457, 465.

Mining is not commerce.

Delaware, L. & W. R. Co. v. Yurkonis, 238 U. S. 439, 444-445.

Hammer v. Dagenhart, 247 U. S. 251, 272, *supra.*

The ginning of cotton is not commerce.

Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 129, 136, *supra.*

The refining of sugar is not commerce.

United States v. E. C. Knight Co., 156 U. S. 1, 12, 17, *supra.*

The making of contracts for advertising in periodicals is not commerce.

Blumenstock Brothers Advertising Agency v. Curtis Publishing Co., 252 U. S. 436, 442:

"The advertising contracts did not involve any movement of goods or merchandise in interstate commerce, or any transmission of intelligence in such commerce."

Rendering commercial credit reports beyond state lines is not interstate commerce.

United States Fidelity & Guaranty Co. v. Kentucky, 231 U. S. 394, 398.

The business of organized baseball is not commerce.

Federal Baseball Club v. National League of Professional Baseball Clubs, 259 U. S. 200, 208-209.

We now pass to a consideration of affirmative definitions of "trade or commerce" as used in the Sherman Anti-Trust Act.

Point C.

"Trade or commerce," as used in the Sherman Anti-Trust Act, connote the transfer of something, whether it be persons, commodities or intelligence, from one place or person to another.

"Trade or commerce," as used in the Sherman Anti-Trust Act have, jointly and singly, been the subject of definition in a multitude of cases in this Court and in the

lower Federal courts. No useful purpose would be served in reviewing all these cases, but we may say that in not one have we found a definition which would include the business of these appellants.

In holding that the business of organized baseball is not trade or commerce within the Sherman Anti-Trust Act, the Court of Appeals of the District of Columbia, in *National League, etc. v. Federal Baseball Club*, 50 App. D. C. 165, 168, said:

> "'The word "trade," in its broadest signification, includes, not only the business of exchanging commodities by barter, but the business of buying and selling for money; or commerce and traffic generally.' *May v. Sloan*, 101 U. S. 231, 237 (25 L. Ed. 797). It means 'the buying as well as the selling of property.' *United States v. United States Steel Corporation, et al.* (D. C.), 223 Fed. 55, 177. Webster's Dictionary defines trade as 'the act or business of exchanging commodities by barter; the business of buying and selling for money; commerce; traffic; barter'—and says that 'Commerce, in its simplest signification, means exchange of goods. * * * It may be said to be trade, traffic, or exchange between different places and communities.' And according to the Century Dictionary, commerce is defined as 'interchange of goods, merchandise or property of any kind; trade; traffic.' 'Commerce, briefly stated, is the sale or exchange of commodities.' *United States v. Swift & Co.* (C. C.), 122 Fed. 529. Substantially the same definitions are given in the cases of *United States v. E. C. Knight Co.*, 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325; *Gibbons v. Ogden*, 9 Wheat. 1, 189, 190, 6 L. Ed. 23; *Gloucester Ferry Co. v Pennsylvania*, 114 U. S. 196, 5 Sup. Ct. 826, 29 L. Ed. 158; *In re Charge to Grand Jury* (D. C.), 151 Fed. 834.
>
> Through these definitions runs the idea that trade and commerce require the transfer of something, whether it be persons, commodities, or intelligence, from one place or person to another."

In affirming the decision of the Court of Appeals of the District of Columbia, this court, in *Federal Baseball Club v. National League of Professional Baseball Clubs,* 259 U. S. 200, at 208-9, said:

> "The decision of the Court of Appeals went to the root of the case, and, if correct, makes it unnecessary to consider other serious difficulties in the way of plaintiff's recovery. * * * But we are of opinion that the Court of Appeals was right.
>
> The business is giving exhibitions of baseball, which are purely state affairs. It is true that, in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and states. But the fact that, in order to give the exhibitions, the League must induce free persons to cross state lines, and must arrange and pay for their doing so, is not enough to change the character of the business. According to the distinction insisted upon in *Hooper v. California,* 155 U. S. 648, 655, the transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money, would not be called trade or commerce in the commonly accepted use of those words. As it is put by the defendant, personal effort, not related to production, is not a subject of commerce. That which, in its consummation, is not commerce, does not become commerce among the states because the transportation that we have mentioned takes place. To repeat the illustrations given by the court below, a firm of lawyers sending out a member to argue a case, or the Chautauqua lecture bureau sending out lecturers, does not engage in such commerce because the lawyer or lecturer goes to another state."

In *Thornton, Combinations in Restraint of Trade,* p. 167, the author says in discussing the Sherman Act:

> "No doubt the word 'trade' was here used in abundance of caution; for it is covered by the word 'commerce'. It is broad enough to cover every kind of ex-

change or dealing, but it is here used to denote the purchase or barter and sale of goods, wares and merchandise, either at wholesale or retail."

Point D.

The business of dry cleaning and dyeing here involved consists solely of the performance of labor and the rendering of a service in cleaning, dyeing and/or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof and is not "trade or commerce" within the meaning of the Sherman Anti-Trust Act.

The decisions of this Court above cited under Point B, which conclusively settle that manufacturing is not commerce, hold that the circumstance that the article when manufactured will become an article of commerce does not have the effect of making the manufacture thereof a transaction of commerce. This principle is, *a fortiari*, applicable to the case at bar, which involves the cleaning and dyeing of articles not intended to be sold after having been cleaned or dyed, but which have passed out of the realm of commerce into the hands of the ultimate users thereof.

The question presented in this appeal has been before some of the State courts in connection with the laundry business.

In *Smith v. Jackson*, 103 Tenn. 673, the question was whether an agent of a laundry who collected garments and sent them out of the State of Tennessee to be washed and laundered and afterwards redelivered them to their owners, collecting the price of the entire service, was engaged in commerce so as to be protected by the interstate commerce clause of the Federal Constitution from the payment of the privilege tax imposed on agents for laundries by a Tennessee statute. The court, in holding that the agent was not engaged in commerce and hence was not exempt from the tax, said (p. 675):

"The word 'commerce' found in this clause cannot be held to embrace a transaction such as is here presented. It implies, when used by business men, as it is defined by Mr. Webster, the lexicographer, trade or traffic, as in the exchange of specific articles or commodities, or else of these for money or its representative. In a case like the present, nothing, in the true commercial sense, is sold or exchanged. The agent takes the articles committed to his care, and agrees with the owner that he will send them across the state line, and have certain labor bestowed on them, and, when returned, then he is to receive compensation equal to this labor. There is no commodity created, of which the ownership is changed. It is simply a personal contract based on a valuable consideration, having no element of a commercial transaction falling within the protection of this clause of the Constitution."

In *State v. Frank*, 114 Ark. 47, 56, in holding that an agreement between the owners of laundries to fix the price of laundry work is not within the operation of an Arkansas statute declaring it to be a conspiracy to become a party to an agreement to fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage, the court said:

"The business of laundering is a mere service done, whether performed by hand or by machinery, and an agreement to regulate the price to be charged therefor is in its last analysis merely an agreement to fix the price of labor or services, and the legislature of this state has not made such an agreement unlawful."

In *State v. McClellan*, 155 La. 38 (1924), it was held that the laundry business was not "trade" or "commerce" under a Louisiana statute which followed sections 1 and 2 of the Sherman Act and section 3 of the Clayton Act in

prohibiting contracts, combinations in the form of trust or otherwise, or conspiracies in restraint of trade or commerce or monopolization thereof, and hence that no prosecution lay under such statute for attempting to monopolize the laundry business in the city of New Orleans.

In discussing the case last above cited, the same court, in *Tooke & Reynolds v. Bastrop Ice & Storage Co.*, 172 La. 781, 795, said:

> "There are certain expressions in the opinion which seem to have been interpreted to mean that the court held that a monopoly can be created in no way except that stated in Section 4 of the Act. We shall not attempt to review those expressions. Suffice it to say that the court did not intend to so hold.
>
> The only question before the court with reference to monopolies was whether the laundry business is trade or commerce. Any expressions in the opinion not pertinent to that issue are *obiter dicta.*"

In *United States v. Fur Dressers' & Fur Dyers' Ass'n*, 5 Fed. (2d) 869, 872, the court in holding the Sherman Anti-Trust Act inapplicable to an association of fur dressers and fur dyers, in addition to other reasons given said:

> "The defendants neither buy nor sell furs. They only dress and dye furs belonging to others at their places of business. Dyeing and dressing furs do not constitute trade or commerce, but only the performance of labor."

State v. Duluth Board of Trade, 107 Minn. 506, was a proceeding in which the State of Minnesota sought to forfeit the corporate franchise of the Duluth Board of Trade, and restrain it and its officers from further transacting business under its then rule, on the ground that a provision of the said rule requiring members to charge uniform commissions for their services in making sales of grain for their customers violated the anti-trust statute of the State. That statute provided for the forfeiture of the corporate

franchise of a corporation violating its provisions, and is set forth at page 516, but it is not quoted here, for it is considered that its nature and scope is fully shown by the following extract from the opinion (page 517):

> "The Minnesota anti-trust law is framed along the line of the Federal statute, although it is more diffuse. It may fairly be assumed, however, that the general purpose of all statutes of this kind is the same, and we may therefore properly look to the decisions made under Federal and state statutes of a similar character for the principle by which to construe our own statute. *Minnesota v. Northern Securities Co.* (C.C.), 123 Fed. 692. The first clause or part of the statute prohibits agreements and combinations in restraint of trade, thus following the language of Sec. 1 of the Federal statute (act July 2, 1890, chap. 647, 26 Stat. at L. 209). This general language is then followed by provisions which specifically forbid combinations or agreements which tend in any way to limit, fix, control, maintain, or regulate the price or production of any article of trade, manufacture, or use, bought and sold within the state, or which prevent or limit competition in the sale or purchase of the same."

After a most extended discussion of the common law relating to monopolies and restraints of trade and of the Federal decisions under the Sherman Anti-Trust Act, and of State decisions under the various State anti-trust acts, the Supreme Court of Minnesota said (page 547):

> "Agreements to regulate the price of personal services, when standing alone, have never been held to be agreements in restraint of trade, and it is only when connected with other contracts and conduct which are in themselves illegal that they come within the purview of the Federal anti-trust law."

And the court held (page 550) "that combinations and agreements, the sole and only purpose of which is to fix the charges that shall be made for personal services are not within the prohibitions of the statute."

A case which has been cited as contrary to the views herein expressed is that of *Kansas City v. Seaman*, 99 Kans. 143. In that case the question was whether an employee of a Kansas City, Missouri, laundry who with a wagon gathered up linen of patrons of the laundry in Kansas City, Kansas, took it to the laundry, and when it was ready for delivery, returned the same to the patrons and collected the charges, was properly convicted of violating an ordinance of Kansas City, Kansas, imposing a license tax upon each laundry operated within the City. The court held that the conviction was unlawful, first, for the reason that the employee of the laundry company was not conducting a laundry within the City, and second, for the reason that collecting the articles in Kansas, carrying them into Missouri, and returning them to their owner after the service had been performed, was interstate commeree. It may be said of that case that the second reason given was unnecessary for the decision of the case; that the court rested its decision upon the transportation involved; and that the court placed an unsound construction upon the holding in *International Text Book Co. v. Pigg*, 217 U. S. 91, upon which it relied. This court has held that incidental transportation does not render a transaction interstate commerce which is not otherwise so, and has pointed out that the basis of the decision in *International Text Book Co. v. Pigg, supra*, was that interstate traffic in text books and apparatus was involved. *Hooper v. California*, 155 U. S. 648, 655; *Federal Baseball Club v. National League of Professional Baseball Clubs*, 259 U. S. 200, 209; *Blumenstock Brothers Advertising Agency v. Curtis Publishing Co.*, 252 U. S. 436, 442; *New York Life Insurance Co. v. Deer Lodge County*, 231 U. S. 495, 511; *United States Fidelity and Guaranty Co. v. Kentucky*, 231 U. S. 394, 398. As a further distinction, it may be pointed out that, in the case at bar, no transportation whatever is involved.

Some of the State anti-trust statutes expressly include labor and personal services. The policy of the United States in this respect, however, has been settled to the contrary, for it is provided in Sec. 6 of the Clayton Act (Act of Congress approved October 15, 1914, Chap. 323, 38 Stat. 730, 15 U. S. C., Sec. 17) "The labor of a human being is not a commodity or article of commerce," and Section 1 of said Act provides " 'Commerce' as used herein, means trade or commerce among the several states * * * or within the District of Columbia" (15 U. S. C., Sec. 12).

Point E.

The use of the term "restraint of trade" by courts in passing upon the enforceability of restrictive covenants affecting various businesses, occupations and professions is no support for the contention that such occupations or professions are "trade or commerce" within the meaning of the Sherman Anti-Trust Act.

At common law, the expression "restraint of trade" was and still is used by the courts in passing upon the enforceability of covenants restricting the activities of the covenantor in various businesses, occupations and professions. These covenants were more likely to be found in contracts relating to the sale of a business or in contracts of employment, but they have arisen in other connections. In passing upon the enforceability of such covenants—that was the way in which their validity arose at common law—there is no question but that the courts have used the phrase "restraint of trade" without distinction as to the nature of the business, occupation or profession of the covenantor; it making no difference whether he was a merchant, an artisan, a lawyer, a doctor or a dentist.

It was argued by the Government below that this use of the expression "restraint of trade" by the courts in such cases is the equivalent of a holding that every gainful occupation is "trade" under the Sherman Anti-Trust

Act because that Act was passed in the light of the common law.

We submit that such argument is not sound; first, because, for reasons hereinabove given, no construction can extend "trade or commerce" as used in the Sherman Anti-Trust Act beyond "commerce" as used in the commerce clause of the Constitution; and, second, because the use by the courts of the artful expression "restraint of trade" in passing upon the enforceability of a restrictive covenant is not the equivalent of holding that the covenantor is engaged in "trade."

For example, it is submitted that a holding by a court that an all-restrictive covenant by a dentist in selling his practice is not enforceable because unreasonably "in restraint of trade" does not establish that a dentist is engaged in "trade."

We do not believe "trade" had any such signification at common law any more than it has in common understanding, and we submit that it was not and could not have been so used in the Sherman Anti-Trust Act.

In this connection, it may be mentioned that the only relevancy in the cause at bar of the common law meaning of "trade" is in whatever aid it may lend to the interpretation of the Sherman Anti-Trust Act.

As suggested above, contracts in restraint of trade were not affirmatively illegal at common law, but were simply unenforceable. There is no common law right on the part of the United States to bring a suit to enjoin the performance of such contracts; and such right, as asserted in the suit at bar, rests solely on Section 4 of the Sherman Act. See *Thornton, Combinations in Restraint of Trade;* pp. 88, 690-692; *United States v. Agler,* 62 Fed. 824.

Thus, from whatever angle this case is viewed, the Government's suit should fail.

Conclusion.

It is, therefore, respectfully submitted that the decree of the Supreme Court of the District of Columbia was erroneous and should be reversed.

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Supreme Court
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CHARLES ELMORE

No. 667

In the Supreme Court of the United States

OCTOBER TERM, 1931

ATLANTIC CLEANERS AND DYERS, INC.; GLOBE DRY CLEANERS AND DYERS, ARCADE-SUN-SHINE CO., ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Summary of argument	5
Argument:	
A price-fixing agreement by persons engaged in the business of cleaning and dyeing clothes in the District of Columbia is in restraint of trade or commerce within the meaning of the Sherman Act	6
Conclusion	17

CITATIONS

American Bond & Mortgage Co. v. *United States*, 52 F. (2d) 318	7
American Laundry Co. v. *E. & W. Dry-cleaning Co.*, 199 Ala. 154	8
Buckeley v. *Martens*, 156 Atl. 436	9
Campbell v. *Motion Picture Machine Operators' Union*, 151 Minn. 220	12
Federal Baseball Club v. *National League*, 259 U. S. 200	10
General Electric Co. v. *Federal Radio Commission*, 31 F. (2d) 630	7
Hart v. *Keith Vaudeville Exchange*, 12 F. (2d) 341	11
Kansas City v. *Seaman*, 99 Kans. 143	9, 12
Kidd v. *Pearson*, 128 U. S. 1	13
Mitchel v. *Reynolds*, 1 P. Wms. 181	16
Smith v. *Jackson*, 103 Tenn. 673	11, 12
Standard Oil Co. v. *United States*, 221 U. S. 1	7
State of California v. *Tagami*, 195 Cal. 522	10
State v. *Duluth Board of Trade*, 107 Minn. 506	11, 12
State v. *Frank*, 114 Ark. 47	11
State v. *McClellan*, 155 La. 37	11
Swift & Co. v. *United States*, 276 U. S. 311	2
The Case of the Tailors of Ipswich, 11 Coke's Rep. 53a	15
United States v. *Addyston Pipe & Steel Co.*, 85 Fed. 271	15
United States v. *American Linseed Oil Co.*, 262 U. S. 371	14
United States v. *Trans-Missouri Freight Association*, 166 U. S. 290	7
United States v. *Union Pacific R. R. Co.*, 226 U. S. 61	13
Western Union Telegraph Co. v. *Pendleton*, 122 U. S. 347	7
Year Book, 2 Hen. V, fol. 5, pl. 26	15
Modern Methods in Drycleaning	6
Act of July 2, 1890, c. 647, 26 Stat. 209, Secs. 3 and 4 (U. S. C., Title 15, Secs. 3 and 4)	2

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OCTOBER TERM, 1931

No. 667

ATLANTIC CLEANERS AND DYERS, INC., GLOBE DRY CLEANERS AND DYERS, ARCADE-SUN-SHINE CO., et al., appellants

v.

THE UNITED STATES OF AMERICA

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the Supreme Court of the District of Columbia (R. 11), entered upon the motion to dismiss the petition, is unreported.

JURISDICTION

The decree of the court below was entered November 5, 1931. (R. 23.) Petition for appeal was filed December 29, 1931, and was allowed January 2, 1932. (R. 25, 26.)

Jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, c. 544, 32 Stat. 823 (U. S. C., Title 15, Sec. 29), and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345). *Swift & Co.* v. *United States*, 276 U. S. 311.

QUESTION PRESENTED

Whether a price-fixing agreement by persons engaged in the business of cleaning and dyeing clothes in the District of Columbia is in restraint of trade or commerce within the meaning of the Sherman Act.

STATUTE INVOLVED

The Act of July 2, 1890, c. 647, 26 Stat. 209 (U. S. C., Title 15, Sec. 3 and 4), known as the Sherman Antitrust Act, provides in part as follows:

> SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, * * * is hereby declared illegal. * * *
>
> SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. * * *

STATEMENT

This is a suit in equity under Section 4 of the Sherman Antitrust Act to enjoin appellants from further engaging in a combination and conspiracy in restraint of trade and commerce in the District of Columbia in cleaning, dyeing, and otherwise renovating clothes, in violation of Section 3 of that Act. (R. 1, 5.)

The court below overruled motions to dismiss the petition and appellants filed amended answers. (R. 11, 12, 14, 16, 18, 20.) The answers did not deny, and hence admitted (Equity Rule 30), all the material allegations of fact contained in the petition.[1] The sole defense set up was that appellants' business of dry cleaning and dyeing "consists solely of the performance of labor and the rendering of a service in cleaning, dyeing, and/or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not trade or commerce within the meaning of" the Sherman Antitrust Act. (R. 13, 15, 17, 19, 21.) Upon motion by the United States, the court ordered these answers stricken from the files upon the ground that they

[1] The petition alleged that defendants together did substantially all of the business of cleaning, dyeing, and renovating clothing in the District of Columbia. (R. 3.) The answers stated, on information and belief, that persons other than the defendants did at least one-half of this business. (R. 13, 15, 17, 19, 21.)

did not state a valid defense. (R. 22, 23.) After appellants had advised the court that they elected to stand upon their answers, a decree was entered enjoining the combination and conspiracy charged in the petition. (R. 23–24.)

Upon the pleadings, the following facts stand admitted. Appellants are engaged in the business of cleaning, dyeing, and otherwise renovating clothing at plants located in the District of Columbia. (R. 2–3.) Their business is in part, and in some cases principally, at wholesale, pursuant to contracts or engagements with so-called retail dyers and cleaners who maintain shops in the District and receive from the public clothing to be cleaned, dyed, or otherwise renovated. (R. 3, 13–21.) In August, 1928, appellants agreed to raise the prices then being charged for cleaning, dyeing, and otherwise renovating clothing and agreed upon certain minimum and uniform prices, terms, and conditions as those which they would thereafter charge for performing such service. (R. 3.) They also agreed to assign and allot the retail dyers and cleaners among themselves, and each agreed to trade only with the retailers assigned to him. (R. 4.) Appellants subsequently put into effect and carried out their agreement to maintain minimum and uniform prices and to allot customers. (R. 4.)

SUMMARY OF ARGUMENT

Appellants are carrying on the business of cleaning and dyeing clothes for the purpose of making a profit from the sale of a standardized, nonpersonal service. Their business is "trade or commerce" within the meaning of the Sherman Act even if those words are used in the limited sense of barter and exchange. Appellants barter the standardized service which they perform for what it will bring from those desiring the service. The exchange of a given unit of service for a price has been held to be trade or commerce. Transportation is the rendering of a service, and transportation itself is commerce. Transmission of intelligence by telegraph or radio, where a service only is performed, is also commerce. An agreement not to compete in the business of cleaning clothes has been held within the common law doctrine of restraint of trade.

If the meaning of the statute is doubtful, the intention of Congress may be considered. Appellants' agreement to fix prices and allot customers in the cleaning and dyeing business engenders the evils against which the statute was directed and therefore may be presumed to be within the scope of the Act. In addition, the history of the common law doctrine of restraint of trade leads to the same conclusion. Not only was trade which consists in performing a service not outside the common law doctrine, but the doctrine was first applied to protect such trade.

ARGUMENT

A PRICE-FIXING AGREEMENT BY PERSONS ENGAGED IN THE BUSINESS OF CLEANING AND DYEING CLOTHES IN THE DISTRICT OF COLUMBIA IS IN RESTRAINT OF TRADE OR COMMERCE WITHIN THE MEANING OF THE SHERMAN ACT

Appellants contend that the words "trade or commerce," as used in the Sherman Act, do not apply to any business which consists in supplying a service, even though the business has all the earmarks of an ordinary commercial undertaking.

Appellants are engaged in cleaning and dyeing clothes. The service they perform is standardized, as evidenced by their agreement to charge uniform prices. The so-called service performed is also wholly nonpersonal. Appellants are not, like the owner of a baseball club or a theatre, engaged in marketing or exploiting the skill of particular individuals. To the extent that appellants operate at wholesale, the customer whose clothes are serviced may not even know the name of the company which did the work. And the court, we assume, may take judicial notice that appropriate machinery and equipment are used in the business.[2] It is our contention that the business of purveying a standardized, nonpersonal service, where there is, as here, competition upon a price basis, is trade or commerce within the meaning of the Sherman Act.

[2] See "Modern Methods in Dry cleaning," by George G. Gaubatz, jr., published by National Association of Dyers and Cleaners, 1931, pp. 8, 17, 19, 25, 115.

We submit that this view is supported by the decisions, by a consideration of the purposes of the Sherman Act, and by the history of the common-law doctrine of restraint of trade.

Railroads, whose business consists in furnishing a service, the service of transportation, have long been recognized as subject to the limitations of the Sherman Act. This was held in one of the first Sherman Act cases to come before this Court (*United States* v. *Trans-Missouri Freight Association,* 166 U. S. 290), where the Court rejected (p. 312) the contention that the Act was intended to reach only those engaged in the manufacture and sale of articles of commerce, and said, "Railroad companies are instruments of commerce, and their business is commerce itself.".

The business of a telegraph company is furnishing the service communication, but this business has been held to be commerce. *Western Union Telegraph Co.* v. *Pendleton,* 122 U. S. 347. Furnishing a broadcasting service by radio is within the regulatory power of Congress under the commerce clause of the Constitution. *American Bond & Mortgage Co.* v. *United States,* 52 F. (2d) 318, 322 (C. C. A., 7th), certiorari denied February 23, 1932; *General Electric Co.* v. *Federal Radio Commission,* 31 F. (2d) 630, 633 (Ct. App., D. C.), certiorari dismissed, 281 U. S. 464.

In *Standard Oil Company* v. *United States,* 221 U. S. 1, this Court said (p. 51) that the terms of

the Sherman Act, "at least in their rudimentary meaning, took their origin in the common law" and (p. 60) that the scope of the Act is to be measured by "the standard of reason which had been applied at the common law and in this country in dealing with subjects of the character embraced by the statute." It is therefore significant that the common law doctrine of restraint of trade has been applied to the business of dry cleaning as well as to the laundry business.

In *American Laundry Co.* v. *E. & W. Dry-cleaning Co.*, 199 Ala. 154, the plaintiff sued to enjoin violation of a contract entered into between it and five laundry companies. The contract provided that the plaintiff was to establish a dry-cleaning plant in Birmingham, Ala.; that for a period of ten years it would not engage in the laundry business and for the same period the five laundry companies would not engage in the dry-cleaning business; that all dry-cleaning work collected by the laundry companies from their customers should be done by the plaintiff, the laundry companies receiving 25% of the price paid by the customer. The bill alleged that the plaintiff, relying upon this contract, had invested $10,000 in dry-cleaning machinery and equipment and had erected a modern dry-cleaning plant. The defendant laundry company was charged with having refused to deliver to the plaintiff dry-cleaning work collected from the defendant's customers. The court held that the contract, by reason of its tendency to stifle com-

petition, was in restraint of trade and therefore unenforceable in equity.

A recent decision by the New Jersey Court of Errors and Appeals is similar. In *Buckelew* v. *Martens,* 156 Atl. 436, suit was brought on a demand note given to secure payment of liquidated damages for the breach of an agreement between certain laundry companies. The laundry companies agreed to charge their customers a minimum price, to require solicitors of laundry work to charge the same minimum rate, and to employ as solicitors only those with whom they previously dealt. The court affirmed judgment for the defendant upon the ground that the contract was in restraint of trade and illegal at common law. The court said (p. 438):

> The public are entitled to have competition, in order that they may buy at the lowest price, and it makes no difference whether the price-fixing agreements are reasonable or unreasonable or tend to monopoly or not.

Kansas City v. *Seaman,* 99 Kans. 143, held that an employee of a laundry company located in Missouri who collected in Kansas City, Kans., articles to be laundered and who returned the same after they had been laundered was engaged in interstate commerce and therefore not subject to a license fee imposed on every person carrying on the laundry business in Kansas City, Kans. The court rejected (pp. 144–145) the contention made by the city that no

commerce was involved because the transaction was for a personal service with reference to property owned by customers and because the laundry company was selling, not goods, but service. It held that the barter and sale of certain services, like the barter and sale of commodities, may be commerce.

State of California v. *Tagami,* 195 Cal. 522, held that leasing land for the purpose of conducting a sanitarium was within the scope of a treaty guaranteeing to the citizens of each contracting party the right "to carry on trade" and to lease land for "commercial purposes." The court said (pp. 528–529):

> The words "trade" and "commerce" are frequently found in conjunction or juxtaposition in treaties between nations and in those constitutions and laws which define and regulate the scope and purposes of such international engagements. They are also often employed by lexicographers in defining each other. When so employed, and particularly when so used in the conjunctive, they are held to impart to each other an enlarged signification which would include practically every business occupation carried on for the purpose of procuring subsistence or profit and into which, or any material part of which, the elements of bargain and sale, barter, exchange, or traffic enter.

Appellants rely upon *Federal Baseball Club* v. *National League,* 259 U. S. 200, holding that leagues of professional baseball clubs promoting

competitive games between clubs in different States are not subject to the provisions of the Sherman Act. The Court said (pp. 208-209) that the business was giving exhibitions of baseball, which are purely State affairs, and that the interstate transportation attendant upon such exhibitions "is a mere incident, not the essential thing." It said further (p. 209):

> That to which it is incident, the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words. As it is put by the defendants, personal effort, not related to production, is not a subject of commerce.

Each member of a baseball team is employed because of his individual, personal skill. There is no sale of a standardized service, but rather a hiring of the peculiar skill and ability of particular individuals. The service contracted for is purely personal and hence not a subject of commerce. The case is like *Hart* v. *Keith Vaudeville Exchange*, 12 F. (2d) 341 (C. C. A. 2d), certiorari denied 273 U. S. 703, which held that a combination to monopolize the giving of vaudeville exhibitions was not a violation of the Sherman Act.

Appellants also rely upon *State* v. *Frank*, 114 Ark. 47; *State* v. *McClellan*, 155 La. 37; *Smith* v. *Jackson*, 103 Tenn. 673; and *State* v. *Duluth Board of Trade*, 107 Minn. 506. The first two cases held that the respective State antitrust acts did not apply to the laundry business. In *State* v. *Frank*,

supra, the law merely prohibited fixing the price of any "commodity." In *State* v. *McClellan*, *supra*, the section of the act upon which the indictment was based prohibited attempts to monopolize "trade or commerce," but the court held (p. 43) that it was necessary to turn to another section of the act for a definition of these words and that, so construed, only those who sold, leased, or dealt in commodities were within the act.

Smith v. *Jackson*, *supra*, held that the Commerce Clause of the Federal Constitution did not bar a Tennessee occupational tax upon a resident of that State acting as agent for a Kentucky laundry in the collection and delivery of clothes. The decision is in direct conflict with *Kansas City* v. *Seaman*, 99 Kan. 143, *supra*.

State v. *Duluth Board of Trade*, *supra*, held that the rule of a grain exchange requiring its members to charge uniform commissions did not violate the State antitrust law. The court (pp. 546, 551) regarded the commission men as competing with each other on the basis of individual skill and therefore performing a personal service. The court also held (pp. 550–551) that the rule under attack did not restrain trade, because it promoted, rather than stifled, competition. The case was qualified in *Campbell* v. *Motion Picture Machine Operators' Union*, 151 Minn. 220, 230–231, where the court adopted the broad view that the exchange of personal service for a money consideration is "trade" within the meaning of the State antitrust law. In

that case the court, referring to the contention that the business of exhibiting motion pictures is not trade, said (p. 232):

> It seems clear to us that the only logical conclusion is that the word has been used in its broadest sense and includes business of any kind in which a person engages for profit.

Appellants also rely upon cases holding that manufacturing is not commerce. But appellants are not manufacturers; as this Court said in *Kidd* v. *Pearson,* 128 U. S. 1, 20, "Manufacture is transformation—the fashioning of raw materials into a change of form for use." The question here is whether the provisions of the Sherman Act declaring unlawful every agreement in restraint of trade and commerce within the District of Columbia apply to a business where a standardized service is exchanged for cash or whether these provisions apply only to those engaged in the sale or exchange of commodities.

If there is doubt as to the meaning of the statute, it is proper to consider the intention of Congress. Referring to the Sherman Act, the Court said, in *United States* v. *Union Pacific R. R. Co.,* 226 U. S. 61, 87:

> To preserve from undue restraint the free action of competition in interstate commerce was the purpose which controlled Congress in enacting this statute, and the courts should construe the law with a view to effecting the object of its enactment.

In *United States* v. *American Linseed Oil Co.*, 262 U. S. 371, 388, the Court said:

> The Sherman Act was intended to secure equality of opportunity and to protect the public against evils commonly incident to monopolies and those abnormal contracts and combinations which tend directly to suppress the conflict for advantage called competition—the play of the contending forces ordinarily engendered by an honest desire for gain.

Under the circumstances here presented there may be competition among those engaged in the business of selling a service or there may be, by reason of an agreement fixing prices and allotting customers, suppression of all competition. A statute enacted to protect against "evils commonly incident to monopolies" will fail of its full purpose if such a business is beyond the reach of the statute. The consequences of an agreement to maintain prices in such trade may be as serious as those of an agreement to fix the price of a commodity. The price paid for cleaning clothes may be of as much concern to the public as the price of an article of food or clothing. Appellants' agreement restrains the trade of retail shops which receive clothes from the public and have them cleaned or dyed by wholesalers in the same way that a price agreement among wholesalers of shoes would restrain the trade of retail shoe stores.

Not only does consideration of the purposes of the Sherman Act lead to the conclusion that it

applies to appellants' business, but the history of the common-law doctrine of restraint of trade leads to the same conclusion.

The contract in restraint of trade which originally fell under the condemnation of the common law was one whereby a party bound himself not to follow some particular occupation, trade, or calling. From early times it was the policy of the English law to discourage such restraints. They were condemned because they tended to deprive the community of the services of one of its members and frequently tended to create a monopoly and thus destroy the freedom of trade. See *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 279.

The law of restraint of trade thus grew up to protect the trade of the handicraftsman, who performs a service. Curiously, the earliest recorded case (1415) of restraint of trade is that of a dyer. The defendant had bound himself not to exercise his art in the same town as the plaintiff. Justice Hull, after holding the contract void, indignantly exclaimed, "*per Dieu,* if plaintiff were here, he should go to prison until he paid a fine to the King." Year Book, 2 Hen. V, fol. 5, pl. 26.

The Case of the Tailors of Ipswich, 11 Coke's Rep. 53a, was an action of debt against a tailor for exercising his trade without having complied with an ordinance of the corporation of the tailors of Ipswich which prohibited any one from exercising that trade in the town of Ipswich until he had

served at least seven years as an apprentice and had been admitted by them to be a sufficient workman. It was argued—

> That at the common law, no man could be prohibited from working in any lawful trade, for the law abhors idleness, the mother of all evil, *otium omnium vitiorum mater,* and especially in young men, who ought in their youth, (which is their seed time) to learn lawful sciences and trades, which are profitable to the commonwealth, and whereof they might reap the fruit in their old age, for idle in youth, poor in age; and therefore the common law abhors all monopolies, which prohibit any from working in any lawful trade; * * *

The court gave judgment for the defendant, holding that at common law no man could be prohibited from working at any lawful trade.

The early doctrine that all restraints were bad, without exception, gave way (1717) to the view that partial restraints, reasonably adapted to serve the interests of the contracting parties and not injurious to the public, were valid. *Mitchel* v. *Reynolds,* 1 P. Wms. 181. But it was never suggested that the doctrine of restraint of trade did not apply where the trade was carrying on, furnishing, or performing a service.

In prohibiting agreements in restraint of trade or commerce among the States, Congres necessarily acted within the limits of its regulatory power over interstate commerce. In legislating

for the District of Columbia, Congress was not subject to this limitation, and it may have intended to embrace the whole domain of the common law. But for the purposes of the present case it is not necessary to adopt this construction.

Appellants' agreement to fix the prices to be charged for the service of cleaning or dyeing clothes is within the purposes of the Sherman Act because it engenders the evils against which the statute was directed. From the standpoint of legal history, restraint of trade includes a business which consists in performing a service, and Congress adopted the terminology of the common law. It would be a strange reversal, after five centuries, to hold that the business of dyeing, which called forth the first announcement of the doctrine of restraint of trade, is not within a statute the terms of which "at least in their rudimentary meaning, took their origin in the common law."

CONCLUSION

It is respectfully submitted that the decree below should be affirmed.

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APRIL, 1932.

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SUPREME COURT OF THE UNITED STATES.

No. 667.—October Term, 1931.

Atlantic Cleaners and Dyers, Inc.; Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., et al., Appellants,
vs.
The United States of America.

Appeal from the Supreme Court of the District of Columbia.

[May 23, 1932.]

Mr. Justice Sutherland delivered the opinion of the Court.

This is a suit brought by the United States against appellants to enjoin them from continuing, in the District of Columbia, an alleged combination and conspiracy in restraint of trade and commerce in cleaning, dyeing and otherwise renovating clothes, contrary to § 3 of the Sherman Anti-trust Act, c. 647, 26 Stat. 209; U. S. C., Title 15, § 3. Appellants answered, setting up affirmatively that they were engaged solely in the performance of labor and rendering service in cleaning, dyeing and renovating wearing apparel and other articles which had passed into the hands of the ultimate consumers thereof, and that this did not constitute trade or commerce within the meaning of the Anti-trust Act. Upon motion the answer was stricken from the files, on the ground that the matter pleaded was not a valid defense. Appellants elected to stand upon their answers; and a decree was entered as prayed. The case comes here by appeal under the provisions of the Act of February 11, 1903, c. 544, 32 Stat. 823; U. S. C., Title 15, § 29. *Swift & Co.* v. *United States*, 276 U. S. 211, 322; *United States* v. *California Canneries*, 279 U. S. 553, 558.

Upon the facts which stand admitted and those affirmatively pleaded by the answers, the sole question to be determined is whether, within the meaning of § 3 of the Sherman Act, appellants are engaged in trade or commerce in the District of Columbia.

The facts, established as above, are that they are carrying on the business of cleaning, dyeing and renovating wearing apparel at plants located in the District, in part, and in some cases principally, at wholesale pursuant to contracts or engagements with

numerous so-called retail dyers and cleaners who maintain shops in the District for receiving from the public clothing to be cleaned, dyed or otherwise renovated. Appellants, in August, 1928, met together in the District and agreed to raise the then current prices charged for cleaning, dyeing and renovating clothes, and formulated and agreed upon certain minimum and uniform prices, which they, and each of them, should thereafter charge and receive for the performance of such service. They further agreed to assign and allot to one another the retail dyers and cleaners, who, thereupon, were to be held, respectively, as exclusive customers. The agreement to maintain prices and assign and allot customers has been and is being carried into effect.

Sections 1 and 3 of the Sherman Act provide as follows:

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. . . ."

"Sec. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. . . ."

The words describing the activity declared to be illegal are the same in both sections, namely, "restraint of trade or commerce." The contention on behalf of appellants is that the words, being identical, should receive the same construction in § 3 as in the preceding § 1; that § 1 rests solely on the commerce clause of the Constitution; that the words "trade or commerce" in § 1 cannot be broader than the single word "commerce" as used in that clause; and that commerce does not include a business such as that carried on by appellants.

Assuming, but not deciding, that if the acts here charged had involved interstate transactions appellants would not come within the provisions of §1, because the scope of the words "trade or commerce" must there be limited by the constitutional power to regulate commerce, it does not follow that the same words contained in § 3 should be given a like limited construction. Most words have different shades of meaning and consequently may be variously construed, not only when they occur in different statutes, but when

used more than once in the same statute or even in the same section. Undoubtedly, there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning. *Courtauld* v. *Legh,* L. R., 4 Exch. 126, 130. But the presumption is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where the subject matter to which the words refer is not the same in the several places where they are used, or the conditions are different, or the scope of the legislative power exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed. See *State* v. *Knowles,* 90 Md. 646, 654; *Henry* v. *Trustees,* 48 Ohio St. 671, 676; *Feder* v. *Goetz,* 264 Fed. 619, 624; *James et al.* v. *City of Newberg et al.,* 101 Oreg. 616, 619; *County-Seat of Linn Co.,* 15 Kans. 500, 527.

It is not unusual for the same word to be used with different meanings in the same act, and there is no rule of statutory construction which precludes the courts from giving to the word the meaning which the legislature intended it should have in each instance. *L. & N. R. Co.* v. *Gaines,* 3 Fed. 266, 277-278. Thus, for example, the meaning of the word "legislature", used several times in the federal Constitution, differs according to the connection in which it is employed, depending upon the character of the function which that body in each instance is called upon to exercise. *Smiley* v. *Holm,* — U. S. —, decided April 11, 1932. And, again in the Constitution, the power to regulate commerce is conferred by the same words of the commerce clause with respect both to foreign commerce and interstate commerce. Yet the power when exercised in respect of foreign commerce may be broader than when exercised as to interstate commerce. In the regulation of foreign commerce an embargo is admissible; but it reasonably cannot be thought that, in respect of legitimate and unobjectionable articles, an embargo would be admissible as a regulation of interstate commerce, since the primary purpose of the clause in respect of the latter was to secure freedom of commercial intercourse among the states. See *Groves et al.* v. *Slaughter,* 15 Pet. 449, 505; *Steamship Company* v. *Portwardens,* 6 Wall. 31, 32-33;

Buttfield v. *Stranahan*, 192 U. S. 470, 492. Compare *Russell Co.* v. *United States*, 261 U. S. 514, 520-521.

Section 1 having been passed under the specific power to regulate commerce, its meaning necessarily must be limited by the scope of that power; and it may be that the words "trade" and "commerce" are there to be regarded as synonymous. On the other hand, § 3, so far as it relates exclusively to the District of Columbia, could not have been passed under the power to regulate interstate or foreign commerce, since that provision of the section deals not with such commerce but with restraint of trade purely local in character. The power exercised, and which gives vitality to the provision, is the plenary power to legislate for the District of Columbia, conferred by Art. I, § 8, cl. 17 of the Constitution. Under that clause, Congress possesses not only every appropriate national power, but, in addition, all the powers of legislation which may be exercised by a state in dealing with its affairs, so long as other provisions of the Constitution are not infringed. *Capital Traction Company* v. *Hof*, 174 U. S. 1, 5. Undoubtedly, under that extensive power, it was within the competency of Congress to prohibit and penalize the acts with which appellants are here charged; and the only question is whether by § 3 it has done so.

A consideration of the history of the period immediately preceding and accompanying the passage of the Sherman Act and of the mischief to be remedied, as well as the general trend of debate in both houses, sanctions the conclusion that Congress meant to deal comprehensively and effectively with the evils resulting from contracts, combinations and conspiracies in restraint of trade, and to that end to exercise all the power it possessed. In passing § 1, Congress could exercise only the power conferred by the commerce clause; but in passing § 3, it had unlimited power, except as restricted by other provisions of the Constitution. We are, therefore, free to interpret § 3 dissociated from § 1 as though it were a separate and independent act, and thus viewed, there is no rule of statutory construction which prevents our giving to the word "trade" its full meaning, or the more extended of two meanings, whichever will best manifest the legislative purpose. See *United States* v. *Hartwell*, 6 Wall. 385, 396; *Sacramento Nav. Co.* v. *Salz*, 273 U. S. 326, 329-330.

We perceive no reason for holding that Congress used the phrase "restraint of trade" in § 3 in a narrow sense. It is true that the word "trade" is often employed as importing only traffic in the

buying, selling or exchanging of commodities; but it is also true that frequently, if not generally, the word is used in a broader sense. This is pointed out in *The Schooner Nymph,* 1 Summ. 516, 517-518; 18 Fed. Cas. 506, No. 10,388. Construing § 32 of the Coasting and Fishery Act of 1793, c. 8, 1 Stat. 305, 316, which declares that any licensed ship, etc., which shall be employed in any other "trade" than that for which she is licensed shall be forfeited, Mr. Justice Story in that case said:

"The argument for the claimant insists, that 'trade' is here used in its most restrictive sense, and as equivalent to traffic in goods, or buying and selling in commerce or exchange. But I am clearly of opinion, that such is not the true sense of the word, as used in the 32d section. In the first place, the word 'trade' is often and, indeed, generally used in a broader sense, as equivalent to occupation, employment, or business, whether manual or mercantile. Wherever any occupation, employment, or business is carried on for the purpose of profit, or gain, or a livelihood, not in the liberal arts or in the learned professions, it is constantly called a *trade.* Thus, we constantly speak of the art, mystery, or trade of a housewright, a shipwright, a tailor, a blacksmith, and a shoe-maker, though some of these may be, and sometimes are, carried on without buying or selling goods."

A like view was taken by Pollock, B., in *Bank of India* v. *Wilson,* L. R., 3 Exch. Div. 108, 119-120.* See also *Buckelew* v. *Martens,* — N. J. —, 156 Atl. 436; *American Laundry Co.* v. *E. & W. D. C. Co.,* 199 Ala. 154; *Campbell* v. *Motion Picture M. Op. Union,* 161 Minn. 220, 231-232.

We think the word "trade" was used in § 3 of the Sherman Act in the general sense attributed to it by Justice Story and, at least, is broad enough to include the acts of which the Government complains.

Decree affirmed.

*One of the earliest decisions under the common law is *Diers Case,* 2 Henry V, 5, pl. 26, which arose in the time of Henry V (1414). There a weaver had bound himself for a moderate consideration not to follow his craft within the town for a limited time. Before the expiration of the time, however, his necessities sent him back to the loom, and an action against him for damages was brought. The learned Judge, in deciding the case not only held the obligation to be void, but quite evidently considered it criminal as well. With some display of feeling he said—"The obligation is void as being contrary to the common law and by G— if the plaintiff were here he should go to prison until he paid a fine to the King." And even a century or two later, when the rule in respect of contracts in restraint of trade had become less strict, in Mitchell *v.* Reynolds, 1 Peere Williams 181, 193, Parker, C. J., referring to *Diers Case,* approved the indignation of the judge, "tho' not his manner of expressing it."